

# Best Available Copy

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031  
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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/746,179
Filing Date	12/21/00
First Named Inventor	Harry R. Gail, Jr.
Art Unit	2661
Examiner Name	Joshua A. Kading
Attorney Docket Number	END920000184US1

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Shelley M Beckstrand, Esq. PC		
Signature			
Printed name	Shelley M Beckstrand		
Date	3 Jun 2006	Reg. No.	24, 886

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name			Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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*TRADEMARKS*

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL For FY 2006

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

**Complete if Known**

Application Number	09/746,179
Filing Date	21 Dec 2000
First Named Inventor	Harry R. Gail, Jr.
Examiner Name	Joshua A. Kading
Art Unit	2661
Attorney Docket No.	END920000184US1

**METHOD OF PAYMENT** (check all that apply)

Check  Credit Card  Money Order  None  Other (please identify): \_\_\_\_\_

Deposit Account Deposit Account Number: 09-0466 Deposit Account Name: IBM Corporation

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

Charge fee(s) indicated below  Charge fee(s) indicated below, except for the filing fee

Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17  Credit any overpayments

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)**

**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

<u>Application Type</u>	<u>FILING FEES</u>		<u>SEARCH FEES</u>		<u>EXAMINATION FEES</u>		
	<u>Fee (\$)</u>	<u>Small Entity</u>	<u>Fee (\$)</u>	<u>Small Entity</u>	<u>Fee (\$)</u>	<u>Small Entity</u>	<u>Fees Paid (\$)</u>
Utility	300	150	500	250	200	100	0
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description

	<u>Small Entity</u>
Each claim over 20 (including Reissues)	50 25
Each independent claim over 3 (including Reissues)	200 100
Multiple dependent claims	360 180

<u>Total Claims</u>	<u>Extra Claims</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>	<u>Multiple Dependent Claims</u>
- 20 or HP = 0	x	= 0		<u>Fee (\$)</u> <u>Fee Paid (\$)</u>

HP = highest number of total claims paid for, if greater than 20.

<u>Indep. Claims</u>	<u>Extra Claims</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>	<u>Fee (\$)</u> <u>Fee Paid (\$)</u>
- 3 or HP = 0	x	= 0		0

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
- 100 =	/ 50 =	(round up to a whole number) x		=

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Petition Revival of Application for Patent Abandoned Unintentionally

1,500.00

**SUBMITTED BY**

Signature	<i>Shelley Beckstrand</i>	Registration No. (Attorney/Agent) 24,886	Telephone 276 238-1972
Name (Print/Type)	Shelley M. Beckstrand	Date 3 Jun 2006	

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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DAG  
ZMW

PTO/SB/64 (10-06)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)  
END920000184US1First named inventor: **Harry R. Gail, Jr.**Application No.: **09/746,179**Art Unit: **2661**Filed: **21 Dec 2000**Examiner: **Joshua A. Kading**Title: **System and Method for Determining Network  
Discrete Utilization**

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

## 1. Petition fee

 Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27. Other than small entity – fee \$ 1,500.00 (37 CFR 1.17(m))

## 2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of \_\_\_\_\_ (identify type of reply):

has been filed previously on 06/08/2006 SZEWDIE1 00000016 09746179  
 is enclosed herewith. 01 FC:1453 1500.00 OP

- B. The issue fee and publication fee (if applicable) of \$ 1,700.00.  
 has been paid previously on \_\_\_\_\_.  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 3. Terminal disclaimer with disclaimer fee

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Shelley M Beckstrand  
Signature

6/2/06

Date

SHELLEY M BECKSTRAND

24,886

Typed or printed name

Registration Number, if applicable

61 GLENMONT ROAD

(276) 238-1972

Address

Telephone Number

WOODLAWN, VA 24381

Address

Enclosures:  Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unintentional delay Other: \_\_\_\_\_**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

- Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

\_\_\_\_\_  
Date\_\_\_\_\_  
Signature\_\_\_\_\_  
Typed or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of

Applicant : H. R. Gail, Jr. et al.  
Serial No. : 09/746,179  
Filed : 21 Dec 2000

Examiner : Joshua A. Kading  
Art Unit : 2661

Entitled : System and Method for Determining  
Network Discrete Utilization  
Docket No. : END920000184US1

**STATEMENT ESTABLISHING UNINTENTIONAL DELAY**

Honorable Commissioner  
for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The subject application went abandoned on 16 Dec 2005 for failure to pay the issue fee in response to a Notice of Allowance and Fee(s) Due mailed 16 Jun 2005 to the New York address of applicant's attorney, and returned by the Postal service to the USPTO as undeliverable later in June 2005 (the day is illegible on the notice, but the month and year are legible).

Applicant's attorney had previously, in May 2004, moved

from New York. He submitted the change of correspondence address for this application on 4 Nov 2005.

The Notice of Allowance and Fee(s) Due was not received by applicant, who became aware of the abandonment upon receiving the Notice of Abandonment which was mailed 9 May 2006, which being sent after submission of the change of correspondence address was sent the correct address and received by applicants attorney on or about 16 May 2006.

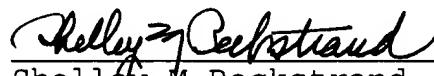
Immediately upon receiving the Notice of Abandonment, applicant's attorney attempted unsuccessfully to access PAIR, both private and public, to ascertain the cause. He then called the Examiner and was provided by fax on 17 May 2006 a copy of the Notice of Allowance and Issue Fee(s) Due and a copy of the notice of non-delivery.

Copies of the following papers are attached:

1. Notice of Allowance and Issue Fee(s) Due.
2. Fee(s) Transmittal, with authorization to charge issue fee and publication fee totaling \$1,700.00 to deposit account 09-0466.

3. Fee Address Indication Form
4. Change of Correspondence Address (confirmation copy, received by the USPTO, 4 Nov 2005).
5. Notice of Abandonment
6. Fax from Examiner Chau Nguyen with attachment containing Postal Service notice of non-delivery of 16 Jun 2005 mailing (presumably of the Notice of Allowance and Issue Fee(s) Due).
7. Transmittal Form (for Petition and petition fee)
8. Fee Transmittal (for Petition to Revive)
9. Check for fee for Petition to Revive, \$1,500.00

Sincerely,

  
\_\_\_\_\_  
Shelley M. Beckstrand  
Reg. No. 24,886  
Attorney for Applicant

Date: 3 Jun 2006

Shelley M Beckstrand, P.C.  
Patent Attorney  
61 Glenmont Road  
Woodlawn, VA 24381-1341

Phone: (276) 238-1972  
Fax: (276) 238-1545

## CONFIRMATION COPY

PTO/SB/122 (04-05)

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**CHANGE OF  
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Application**

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 Alexandria, VA 22313-1450

Application Number	09/746,179
Filing Date	12-21-2000
First Named Inventor	H. Gail, Jr.
Art Unit	2661
Examiner Name	J. Kading
Attorney Docket Number	END920000184 US1

Please change the Correspondence Address for the above-identified patent application to:

The address associated with  
Customer Number: \_\_\_\_\_

OR

Firm or  
Individual Name **Shelley M Beckstrand**

Address **Patent Attorney**  
**61 Glenmont Road**

City **Woodlawn** State **Virginia** Zip **24381-1341**

Country **USA**

Telephone **276-238-1972** Email **beckstrand@adelphia.net**

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the:

- Applicant/Inventor
- Assignee of record of the entire interest.  
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).
- Attorney or agent of record. Registration Number 24,886
- Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number \_\_\_\_\_

Signature

*Shelley M Beckstrand*

Typed or Printed  
Name

*Shelley M Beckstrand*

Date

**1 Nov 2005**

Telephone **276-238-1972**

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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UNITED STATES PATENT AND TRADEMARK OFFICE

JUN 07 2006

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[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,179	12/21/2000	Harry R. Gail JR.	END920000184US1	2904
7590	05/09/2006		EXAMINER	
Shelley M. Beckstrand Patent Attorney 61 Glenmont Road Woodlawn, VA 24381-1341			KADING, JOSHUA A	
			ART UNIT	PAPER NUMBER
			2661	
DATE MAILED: 05/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Abandonment**

Application No.

09/746,179

Applicant(s)

GAIL

Examiner

Art Unit

KADING

2661

*– The MAILING DATE of this communication appears on the cover sheet with the correspondence address–*

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7.  The reason(s) below:

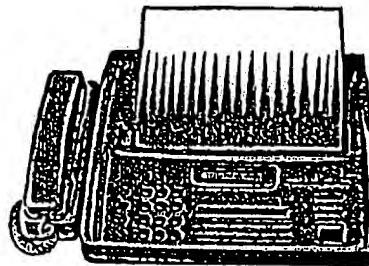
lgd

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

05/17/2006 12:42 FAX 7033055679

001

UNITED STATES DEPARTMENT OF COMMERCE  
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Washington D.C. 20231



## TELECOPY/FACSIMILE TRANSMISSION COVER SHEET

DATE:

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TO:

SHELLY M. BECKSTRAND

(NAME)

(COMPANY OR FIRM)

(276) 238 - 1545

(FAX NO.)

FROM:

CHAU NGUYEN

(NAME)

(571) 272 - 3126

(VOICELINE NO.)

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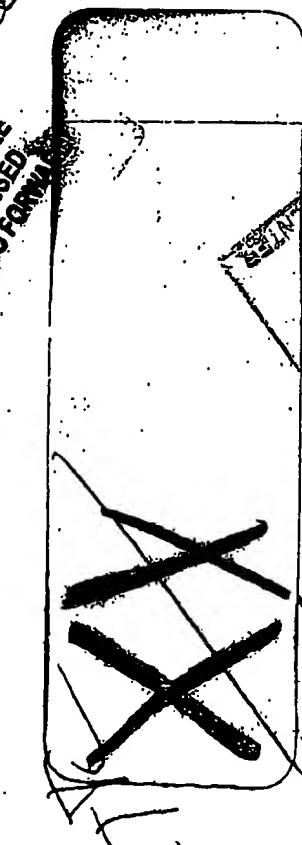
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002

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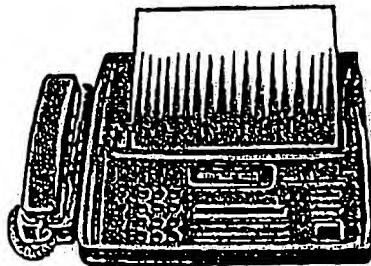
09/746,179

05/17/2006 12:35 FAX 7033055679

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Patent and Trademark Office  
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Washington D.C. 20231



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5/17/06

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(NAME)

(COMPANY OR FIRM)

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(FAX NO.)

FROM:

CHAN NGUYEN

(NAME)

(571) 272-3126

(VOICELINE NO.)

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## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590 06/16/2005

Shelley M. Beckstrand, P.C.  
 Attorney at Law  
 314 Main Street  
 Owego, NY 13827

EXAMINER

KADING, JOSHUA A

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 06/16/2005

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,179	12/21/2000	Harry R. Gail Jr.	END920000184US1	2904

TITLE OF INVENTION: SYSTEM AND METHOD FOR DETERMINING NETWORK DISCRETE UTILIZATION

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1400	\$300	\$1700	09/16/2005

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHT. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THE STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (O AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

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If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

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## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590 06/16/2005

Shelley M. Beckstrand, P.C.  
 Attorney at Law  
 314 Main Street  
 Owego, NY 13827

EXAMINER

KADING, JOSHUA A

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 06/16/2005

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,179	12/21/2000	Harry R. Gail JR.	END920000184US1	2904

TITLE OF INVENTION: SYSTEM AND METHOD FOR DETERMINING NETWORK DISCRETE UTILIZATION

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1400	\$300	\$1700	09/16/2005

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHT. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

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If the SMALL ENTITY is shown as NO:

- A. Pay TOTAL FEE(S) DUE shown above, or
- B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee Transmittal and pay the PUBLICATION FEE (if required) and the ISSUE FEE shown above.

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Notice of Allowability	Application No.	Applicant(s)
	09/748,179	GAIL ET AL.
	Examiner	Art Unit
	Joshua Kading	2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--  
 All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 1-15-05.
  2.  The allowed claim(s) is/are 1-4, 7-10, 12-15, 17, 19, 20, 21, 24-27, and 30-33; renumbered: 1-24 respectively.
  3.  The drawings filed on 10 June 2004 are accepted by the Examiner.
  4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a)  All b)  Some\* c)  None of the:
      1.  Certified copies of the priority documents have been received.
      2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
 THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a)  Including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date 6-9-05.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

CHAU NGUYEN  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 2600

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Application/Control Number: 09/746,179

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Art Unit: 2661

**EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Shelley Beckstrand on 8 June 2005.

The application has been amended as follows:

Claim 27, line 2 is changed to, --claim 26 wherein said Tw, σTw and p are related by--.

2. The following is an examiner's statement of reasons for allowance:
3. Claims 1-4, 12-17, 20, 21, and 24-27 are allowable because applicant's arguments, see REMARKS, pages 27-28, section 35 U.S.C. 102, third paragraph; pages 30-31, second paragraph pg. 30 continuing until final full paragraph pg. 31 (pages 34-35 have identical arguments); and page 33, third full paragraph, lines 3-9, filed 15 January 2005, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Application/Control Number: 09/746,179

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Kading whose telephone number is (571) 272-3070. The examiner can normally be reached on M-F: 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joshua Kading  
Examiner  
Art Unit 2661

June 9, 2005

05/17/2006 12:37 FAX 7033055679

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APPLICATION NO.	FILING DATE	FIRST-NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,179	12/21/2000	Harry R. Gail JR.	END920000184US1	2904
7590	06/16/2005		EXAMINER	
Shelley M. Beckstrand, P.C. Attorney at Law 314 Main Street Owego, NY 13827				KADING, JOSHUA A
		ART UNIT	PAPER NUMBER	2661

DATE MAILED: 06/16/2005

**Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)**  
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 777 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 777 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office Patent Legal Administration at (571) 272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

05/17/2006 12:37 FAX 7033055679

009

<b>Examiner-Initiated Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/748,179	GAIL ET AL
<b>Examiner</b>	<b>Art Unit</b>	
Joshua Kading	2661	

**All Participants:** **Status of Application:** Allowed

(1) Joshua Kading. (3) \_\_\_\_\_  
 (2) Mr. Shelley Beckstrand. (4) \_\_\_\_\_

**Date of Interview:** 8 June 2005 **Time:** 12:50 PM

**Type of Interview:**  
 Telephonic  
 Video Conference  
 Personal (Copy given to:  Applicant  Applicant's representative)

**Exhibit Shown or Demonstrated:**  Yes  No  
 If Yes, provide a brief description:

**Part I.**  
**Rejection(s) discussed:**  
*none*

**Claims discussed:**  
*claim 27*

**Prior art documents discussed:**  
*none*

**Part II.**  
**SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:**  
*Correction to claim as indicated in Examiner's Amendment.*

**Part III.**  
 It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.  
 It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

  
 (Examiner/SPE Signature)

(Applicant/Applicant's Representative Signature – if appropriate)

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